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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/077,364	02/15/2002	John K. Savage	29178/38215	3674
4743	7590	11/10/2003	EXAMINER	
MARSHALL, GERSTEIN & BORUN LLP 6300 SEARS TOWER 233 S. WACKER DRIVE CHICAGO, IL 60606			NGUYEN, CUONG H	
			ART UNIT	PAPER NUMBER
			3625	

DATE MAILED: 11/10/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/077,364

Applicant(s)

SAVAGE, JOHN K.

Examiner

CUONG H. NGUYEN

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-- Th MAILING DATE of this communication appears on the cover sheet with the correspond nce address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 June 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-55 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-55 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☒ Interview Summary (PTO-413) Paper No(s). 4
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

1. This Office Action is the answer to the declaration & Fee (received on 6/21/2002) for this Re-issue application, this paper has been placed in the file.

2. Claims **1-55** are pending in this application (claims 1-13 were in original application; claims 14-55 were newly added for examination in this reissue application).

3. Election

3. A telephone call was made to the current attorney of the record (Mr. Anthony G. Sitko, reg.# 36,278) on 10/21/03 to request an oral election to a restriction requirement between method and system claims; the applicant elected "system" claims 1-22 for examination.

Claim Rejections - 35 USC § 102

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims **14-20, 22** are rejected under 35 U.S.C. 102(b) as being anticipated by Cahlander et al.(US Pat. 4,922,435).

A. As to claim **14**, Cahlander et al. teach about a system for predicting future food needs in Fig.27, comprising:

- a processor;
- a memory coupled to the processor for storing information about food items, the information including desired quantities of food items at desired time intervals, cooking times for food items, and variable quantities of processed food items; and
- a user interface operationally coupled to the processor and the memory and adapted to communicate cooking instructions for the food items in response to a selected

relation between time of day, the cooking times for the food items and the desired quantities of food items at desired time intervals, and a selected relation between the variable quantities of processed food items and the desired quantities of food items at desired time intervals (see **Cahlander et al.**, Fig. 27, col. 25:63 to col. 26:20, and col. 27:50-53).

B. As to claim **15**, Cahlander et al. teach about a system for predicting future food needs in Fig.27, comprising:

- order receiving interface operationally coupled to the processor and the memory (see **Cahlander et al.**, Fig.1, ref. 623; and they clearly disclose: "operator input terminal 623 which includes a full function keyboard and a CRT display"), and adapted to receive orders for food items and update the information about food items including the variable quantities of processed food items.

C. As to claim **16**, Cahlander et al. teach about a system for predicting future food needs in Fig.27, wherein the processor upon **receiving** an order for a selected number of a selected food item from the order receiving interface **subtracts** the selected number of the selected food item from the variable quantities of processed food items for the selected food item. **Cahlander et al.**'s claim 84 teach that above features are inherent in **Cahlander et al.**'s system.

D. As to claims **17**, and **18**, Cahlander et al. teach about a system for predicting future food needs in Fig.27, wherein the user interface comprises an input device and an output device (see **Cahlander et al.**, Fig.1, ref. 623; and they clearly disclose:" operator input terminal 623 which includes a full function keyboard and a CRT display").

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E. As to claim **19**, Cahlander et al. teach about a system for predicting future food needs in Fig.27, wherein the processor **initiates** a cooking instruction for a selected food item to the user interface upon the current time of day **being equal to or less than** a time value in the desired quantities of food items at desired time intervals for the selected food item **minus** the cooking time for the selected food item. This was inherently taught in 1:15-20 wherein the food must be cooked under correct conditions for the proper time (please note that Cahlander et al.'s system uses timers combining with a processor for sensing time intervals; then making decisions to initiate further instructions).

F. As to claim **20**, Cahlander et al. teach about a system for predicting future food needs in Fig.27, wherein the processor initiates a cooking instruction for a selected food item to the user interface upon the quantities of processed food items for the selected food item being less than a desired quantity of the selected food item in the desired quantities of food items at desired time intervals (see **Cahlander** et al., 2:40-41, 4:54-56, 8:51-68, 26:39-42, and 29:8-14 for using comparisons in initiating cooking instructions).

G. As to claim **22**, Cahlander et al. teach about a system for predicting future food needs in Fig.27, wherein the information about food items further including a number of food items to be cooked (see **Cahlander** et al., '435, the abstract lines 9-11).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims **4, 11, 21** are rejected under 35 U.S.C. 103(a) as obvious over Cahlander et al. (US Pat. 4,922,435), in view of Dietrich et al. (US Pat. 5,630,070).

The rationales and references for above rejection of claim 14 are incorporated.

Cahlander et al. do not disclose that quantities of processed food items include a sum comprising quantities of processed food items on-hand and quantities of food items presently cooking.

However, Dietrich et al. teach a similar way of performing inventory that taking into account both in-process and raw products (see **Dietrich** et al., 4:16-31). The examiner submits that what the applicant claims is merely a current available food inventory - counting both on-hand and presently cooked food.

It would be obvious to one of ordinary skill in the art to implement Cahlander et al., with Dietrich et al.'s teaching, because these references suggest that an accurate quantity of product would be provided in an inventory about available items for sales.

6. Claims **1-3, 5-10, 12-13** are rejected under 35 U.S.C. 103(a) as being unpatentable over admitted prior art (see the original specification, page 2, lines 4-13), in view of Cahlander et al. (US Pat. 4,922,435).

A. In view of claims **1, 7-8**: Cahlander et al. check current inventory to a future plan (See Cahlander et al., 1:16-32 for a background that Cahlander et al. recognize and compare current inventory to future plan schedule to determine whether more food should be prepared. The Cahlander et al. teach monitoring and responding to a select

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relationship of value compared to the table of cooking time to prepare intervals...". The examiner submits that at least **'435** Fig.41, 2:40-41, 4:54-56, 8:51-68, 29:8-14, and claim 72, suggest this idea.

The examiner submits that Cahlander et al.'s reference is within the field of the inventor's endeavor and this reference is reasonably pertinent to the particular problem (to predict (near) future food needs) with which the inventor was claimed (see **Cahlander** et al. 1:40-42). In the background of the original specification (page 2, lines 4-13 of S.N. 08/863,000), the applicant admits that "...Systems have been designed, such as that shown in U.S. Patent No. 5,218,527, which instruct the cook when to commence the items of a selected order so that all the items are completed at a current inventory but is responsive to a select order of a customer. Hence, this system merely times when each item of a group of items should be commenced.

Cahlander et al. (**'435**) teach a fully automated system/computer system and method for cooking food products, said system can determining and transmitting cooking signals (instruction/time) for a selected food items, comprising:

- programmable memory (see **Cahlander '435**, claim 83);
- a cooking station monitor (see **Cahlander '435**, col. 26, lines 3-21);
- a quantity of processed selected food item stored on said programmable memory (see **Cahlander '435**, claim 87, col.40, lines 49-51);

The examiner submits that Cahlander et al. teach the followings in Tables I-V :

- a table of desired quantities of the selected food items at desired time intervals relating to said table of selected food items, said table of desired quantities at desired time intervals being stored on said programmable memory; (see also **Cahlander '435**, col.40, lines 49-51 and claim 56);

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- a table of cooking time to prepare intervals relating to said table of selected food items, said table of cooking time to prepare intervals being stored on said programmable memory (see also **Cahlander '435**, col.1, lines 18-32; col.2, lines 42-45; col.9, lines 25-34).

- a table of cooking time to prepare intervals relating to said table of selected food items, said table of cooking time to prepare intervals being stored on said programmable memory (see also **Cahlander '435**, col. 27, lines 50-53);

- control means for initiating a cooking instruction to said cooking station monitor in response to a selected relation between the current time and said table of desired quantities of the selected food items at desired time intervals and said table of cooking time to prepare intervals, and a selected relation between the variable quantity of selected food items and said table of desired quantities of selected food items at desired time intervals (see also **Cahlander '453**, claim 93).

Although claimed languages are not exactly similar, the examiner submits that it would have been obvious to one of ordinary skill in the art at the time of invention to rely on Cahlander et al. for setting up a computer system for determining and transmitting cooking instruction for selected food items at time intervals to supply needs of the selected food items as in claims 1 & 7-8; because the cited reference sufficiently teaches **similar components** to perform tasks of serving/inventory food for future short-term and long-term schedules.

B. As to claims **2, 9**: Cahlander et al. teach a control means to:

-initiate cooking instructions to a cooking station according to planned intervals (see

Cahlander '435, col.1 lines 17-19; and col.32 lines 41-45). This was inherently taught in 1:15-20 wherein the food must be cooked under correct conditions for the proper time

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(please note that Cahlander et al.'s system uses timers combining with a processor for sensing time intervals; and making decisions to initiate cooking instructions).

C. As to claims **3, 10**, Cahlander et al. teach a control means to:

- establishes cooking instructions using ROBOT based on stored/inventory quantities of processed selected food items at desired time intervals (see **Cahlander '435**, Fig.41, Tables II-III, and col.1 lines 17-19).

E. As to claims **5, 12**, Cahlander et al. teach a pre-programmed cash register to automatically taking inventory ("...control means subtracts a number of selected food items manually entered upon said cash register from a variable quantity of selected food items stored in a memory") (see **Cahlander '435**, Fig.41 indicates that a communication link between POS and controller for real-time inventory, claims 84, and 112).

F. As to claims **6, 13**, Cahlander et al. teach different items to be cooked

simultaneously (pre-programmed in memory and using a table of selected food items

(see **Cahlander '435**, Table V, col.28 lines 43-49, and col.29 lines 1-7).

Conclusion

7. Claims 1-22 are not patentable.

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

- Lee et al. (US Pat. 5,712,985), teach a system for estimating business demand based on business influences.
- Hawley, (Pub. NO. GB002206222A – 12/29/1988), teaches about predicting a time at which the food will be cooked using a microprocessor in a cooking oven.
- Richards, (Pub-No. GB002203320A – 10/12/1988), teaches about predicting cooking time in a cooking oven.
- STSC Inc.; Mar. 16, 1987. Acc. #00152990, File 621,"Optimal production planning . . ." by Bartmann, D.; Oct. 1983 Acc. #02301025 file #2.

9. Remark: Please note that applicant is claiming a "system" in claims 1-22, any claiming of functional language should then be limited to a system, machine, product, or apparatus as to opposed to a process or method.

Because system claims cover the structure of the machine. A "use" can only be claimed by claiming the use as a process. See *In re Papesch*, 315 F.2d 381, 384, 137 USPQ 1084, 1088 (CCPA 1963). Claims directed to a system must be distinguished from the prior art in terms of structure rather than function. See *In re Danly*, 263 F.2d 844, 847, 120 USPQ 528, 531 (CCPA 1959). When interpreting functional language, if the prior art is capable of performing the claimed function "even if not directly disclosed" it anticipates. *In re Schreiber*, 128 F.3d 1473, 1478, 44 USPQ2d 1429, 1432 (Fed. Cir.

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1997) (Applicant's claimed limitation was rejected because the functional limitations were inherent in the reference). It is the Examiner's position that the cited prior art of ... et al. is capable of performing the claimed functions (i.e. their computer is capable of performing claimed functions):

The Examiner submits that pending claims are directed to system claims, but they comprise many functional languages (such as claimed phrases after the word "adapted to...", "receiving an order...") instead of defining about that system's components, modules .etc.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to CUONG H. NGUYEN whose telephone number is 703-305-4553. The examiner can normally be reached on 7 am - 330 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, WYNN W. COGGINS can be reached on 703-308-1344. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

Cuong H. Nguyen

CUONG H. NGUYEN
Primary Examiner
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